

REMARKS

In ¶ 2 of the Office Action, the Examiner states that a line of weakness is an alternative embodiment of a slit. This statement is misleading and inaccurate, and is used by the Examiner later to conclude (without proper basis) that a line of weakness is an obvious variant of a slit. The Examiner purportedly bases the statement that a line of weakness is an alternative embodiment of a slit on an excerpt from Applicants' specification, which states that "lines of weakness may be employed in place of slits", which must be viewed in the context of Applicants' invention. Page 8, lines 1 and 2, of Applicants' specification states that the embodiment depicted in FIG. 1 has a pair of slits 20 formed in the front header wall. Line 26 on page 8 states: "Alternatively, lines of weakness may be employed in place of slits," Thus, the Applicants have stated no more than that one embodiment of the invention has slits and an alternative embodiment has lines of weakness. The Applicants have made no statement to the effect that a line of weakness is an obvious variant of a slit. Nor is there any basis for the Examiner's assertion that "a line of weakness is an alternative embodiment of the slit". They are merely two distinct features incorporated in different respective disclosed embodiments, no more and no less. The Applicants submit that the Examiner's statement is incorrect and without basis.

In ¶ 4 of the Office Action, claims 33, 41-48, 50, 52 and 54-57 were rejected under 35 U.S.C. § 102(e) as being

anticipated by U.S. Patent No. 6,360,513 to Strand et al. The Applicants submit that this ground of rejection is now moot in view of the cancellation of claims 33, 41-48, 50, 56 and 57, and in view of the amendment of claims 52, 54 and 55 to depend on claim 49.

In ¶ 6 of the Office Action, claims 1, 3-11, 13-23, 33, 41-50, 52, 54 and 55 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Strand. As applied to canceled claims 41-48 and 50, this ground of rejection is now moot. As applied to claims 1, 3-11, 13-23, 33, 49, 52, 54 and 55, the Applicants traverse this ground of rejection for the following reasons.

The Examiner concedes that Strand does not disclose that the second line of weakness is a slit. Then the Examiner relies on Applicants' specification to assert that a line of weakness can replace a slit. From this premise, the Examiner asserts, without any citation to prior art and without any basis in logic, that: "One is the alternative embodiment (an obvious variation in design) of the other." The Applicants' disclosure does not state or concede that a line of weakness is an alternative embodiment of a slit or vice versa. Instead the Applicants have merely disclosed alternative embodiments of a reclosable package, one having slits and the other having lines of weakness. The Examiner has misrepresented Applicants' disclosure and then jumped to the illogical and unfounded conclusion that a slit is an obvious variation of a line of weakness. Such an assertion is clearly erroneous. A line of

weakness can take many forms, but all lines of weakness are designed to facilitate tearing of a material along a line. In contrast, a slit lies between edges of material that is severed and does not need to be torn. In fact, when a line of weakness is severed, it becomes a slit. It is illogical to assert that a structure intended to facilitate the formation of a slit in a material is an obvious variation of a slit. The Applicants' disclosure provides no support for such an assertion. The Examiner has cited no prior art to support such an assertion. Therefore, the obviousness rejection is fatally flawed.

Section 2142 of the MPEP states:

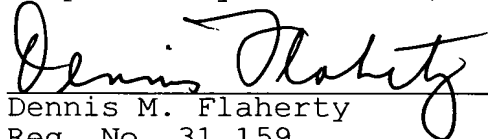
To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure.

The Examiner has clearly failed to follow these MPEP guidelines. The Examiner has not found any motivation in Strand for using a slit in place of a line of weakness. On the contrary, Strand teaches away from using a slit because Strand states that "the zipper assembly 20 [is] hermetically sealed within the tear off portion 11. This could not be true if the tear off portion had slits because slits do not allow for a hermetic seal. Therefore,

the first criterion for establishing a *prima facie* case of obviousness has not been satisfied. Moreover, the Strand reference does not teach or suggest the use of a slit. Therefore, the third criterion has also not been satisfied. In view of the foregoing, no *prima facie* case of obviousness has been made and the obviousness rejection based on Strand should be withdrawn.

The Applicants submit that this application is now in condition for allowance. Reconsideration of the application and allowance of claims 1, 3-11, 13-22, 49 and 51-55 are hereby requested. Since it is believed that generic claims are now allowable, examination and allowance of claims 12, 23, 51 and 53 are also requested, which were previously withdrawn from further consideration.

Respectfully submitted,



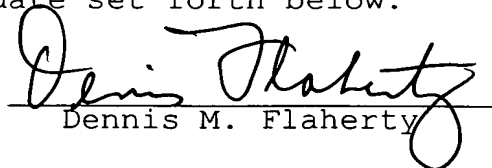
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July 9, 2004
Date



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